



U.S. Department of Transportation

Office of Small and Disadvantaged Business Utilization

IF A FIRM IS CERTIFIED AS A DBE OR ACDBE IN ONE TYPE OF BUSINESS, UNDER WHAT CIRCUMSTANCES CAN IT BE CERTIFIED FOR ANOTHER TYPE OF BUSINESS?

* When a firm is certified for one type of business, it cannot work as a DBE or ACDBE in another type of business – whether individually or as part of a joint venture – unless it becomes certified for the additional type of concession.

* Section 26.71(n) provides as follows:

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You may not, in this situation, require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

Section 26.71(n)

- IN THE CERTIFICATION ACTIONS, HOW SHOULD CERTIFYING AGENCIES DESCRIBE THE TYPES OF WORK A FIRM IS CERTIFIED TO PERFORM AS A DBE?

* Recipients and UCPs must certify firms as DBEs only with respect to specific types of work in which the certifying agency has determined that the socially and disadvantaged owners control the operations of the firm. Appendix F to Part 26 is a sample Uniform Certification Application Form. A DBE firm is asked to provide “the primary business and professional activities the firm is engaged in.” 49 CFR Part 26, Appendix F, Section 2(B)(1). In certifying a firm, a recipient or UCP “must grant certification only for the specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm” (sec. 26.71(n)). Consequently, there is no such thing as a “generic” certification of a firm as a DBE.

* The types of work a firm can perform (whether on initial certification or when a new type of work is added) should be described in terms of five-digit NAICS codes. Firms and recipients should check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work which the UCP has determined the firm's owners can control.

* A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. Multiple NAICS codes should be assigned, where appropriate. The Bureau of Census web site (www.census.gov/naics) provides additional information about the details of NAICS codes. The firm has the primary responsibility to provide the detailed company information the certifying agency needs to make an appropriate NAICS code designation.

* Program participants should rely on, and not depart from, the plain meaning of the NAICS code descriptions in determining the scope of a firm's certification. However, in situations in which a program participant believes that the NAICS codes on record for the firm do not adequately describe the scope of the work the firm's owner can control, program participants should use the guidance in the next two paragraphs of this Q&A.

* If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that the certifying agency, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients should not rely on such a description in determining whether a firm's participation can be counted toward DBE goals.

* A certifier is not precluded from changing a certification classification or description if there is a factual basis in the record. However, certifiers should not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

EXAMPLE: The Sagebrush State UCP certifies the W.E. Coyote Company (WEC) to do traffic control work in August. In November, WEC is proposed as a DBE subcontractor on a Sagebrush State Highway Administration (SSHA) highway project to do bird impact mitigation. Wildlife impact mitigation is not included within the NAICS code for traffic control.

(1) During its review of the bid/offer, SSHA asks the UCP to review its record of the WEC certification. The UCP determines that it had evidence at the time of the WEC's certification that the disadvantaged owner of WEC could control the operations of the firm with respect to wildlife impact mitigation. The UCP sends a letter to SSHA indicating that, based on the cited evidence, the scope of its certification should be amended to include this type of work. The UCP modifies WEC's entry in the UCP's directory accordingly. SSHA can consider UCP's letter in determining whether WEC can count toward the DBE goal on the project for its bird impact mitigation work.

(2) During its review of the bid/offer, SSHA asks the UCP to review its record of the WEC certification. There is no evidence in the UCP's record, contemporaneous with the UCP's certification of the firm, that the disadvantaged owner of WEC could control the operations of the firm with respect to wildlife impact mitigation. Under these circumstances, if the UCP sends a letter to SSHA stating its opinion that WEC is certified for wildlife impact mitigation, SSHA should not consider the UCP's letter in determining whether WEC can count toward the DBE goal on the project.

* Under 49 CFR 26.53(d), a recipient who finds that an apparent successful bidder/offeror failed to meet the good faith effort requirements must, on request of the bidder/offeror, designate an official not involved in the original decision to reconsider the decision.

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR Part 26.